

# STATES OF JERSEY



## **DRAFT FIRE PRECAUTIONS (DESIGNATED PREMISES) (JERSEY) REGULATIONS 201-**

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**Lodged au Greffe on 30th October 2012  
by the Minister for Home Affairs**

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**STATES GREFFE**





Jersey

## **DRAFT FIRE PRECAUTIONS (DESIGNATED PREMISES) (JERSEY) REGULATIONS 201-**

### **REPORT**

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#### **Summary**

These draft Regulations introduce amendments to the Fire Precautions (Designated Premises) (Jersey) Regulations 1979 (“the 1979 Regulations”).

These Regulations designate premises in respect of which a fire certificate issued under Article 3 of the Fire Precautions (Jersey) Law 1977 (“the Law”) is required. The revised Regulations will revoke and re-enact, with amendments, the 1979 Regulations.

Within the existing 1979 Regulations are definitions which place limitations and constraints on certain premises, and which because of other legislation or regulation preclude certain premises (which would otherwise be certificated) from the Law. The revised Regulations will include the introduction of a new House in Multiple Occupation (HMO) definition which will better define those premises deemed most at risk and remove some of the confusion and anomalies caused by the existing definitions. The revision will also set out the circumstances where persons are to be regarded as forming a single household for the purpose of ascertaining whether a fire certificate is required for a private dwelling.

The “Hospital” definition has also been amended by removing the words “administered by the States”. Without this amendment, any future development of a “Private Hospital” would exclude it from being designated as a “Hospital” within the confines of the Regulations.

The proposed recommendations for changes to the Regulations will help ensure that the States of Jersey Fire and Rescue Service delivers an appropriate level of legislation to Island premises based upon risk, and is able to maintain a consistent approach incorporating those premises which currently fall outside of legislation through legal anomalies, by defining them appropriately within the Law.

#### **Background**

The Fire Precautions (Jersey) Law 1977 was promulgated on 1st January 1979, and from this came the Fire Precautions (Designated Premises) (Jersey) Regulations 1979, which came into effect on 1st January 1980.

The Designated Premises Regulations, as amended, identify those premises which require a fire certificate, these are –

The use of premises as –

- A hospital;
- A care or nursing home;
- A building that –
  - ❖ is part of a port or airport; and
  - ❖ includes an area (not being part of a private club) that is used for the embarkation or disembarkation of passengers from any ship or aircraft.

The use of premises as –

- A hostel;
- A lodging house;
- A residential school;
- Tourist accommodation;

If and only if, either –

- (a) (i) Sleeping accommodation is provided in those premises for more than 5 persons, and
- (ii) Some sleeping accommodation is provided in those premises above the first floor or below the ground floor; or
- (b) Sleeping accommodation is provided for more than 40 persons in those premises.

Since promulgation, all of those premises listed above have been certificated.

The definitions within the existing Regulations place limitations and constraints on certain types of premises, as shown above. However, because of legislation administered by other Regulatory authorities, there are certain premises (which would otherwise be certificated) which are excluded from the Fire Precautions Law.

These premises are those which we would classify as Houses in Multiple Occupation (HMOs), such as –

- Staff Accommodation;
- Converted Houses into Units of Accommodation;
- Farm Accommodation;
- Accommodation above Commercial Premises.

These types of accommodation have, because of anomalies in law, either been exempt from regulation, or have remained undesignated.

This has left certain premises, which effectively have the same criteria as those already designated, such as Lodging Houses and Hostels, without any legislative requirement for fire safety.

This imbalance is not only seen as unsafe for the occupants from a Fire Safety perspective, but may also be construed as unfair on those who have to comply with Regulation because their premises are not exempt by definition from law.

Because of the anomalies indicated above, it is proposed to introduce a new HMO definition to the Regulations. The proposed definition is the same as that identified within the UK Housing Act 2004 and that adopted as part of the UK Regulatory Reform (Fire Safety) Order 2005. It will read as follows –

For the purposes of these Regulations, premises are used as a house in multiple occupation if –

- (a) the premises comprise a building or part of a building in which –
  - (i) the living accommodation is occupied by persons who do not form a single household,
  - (ii) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it,
  - (iii) their occupation of the living accommodation constitutes the only use of that accommodation, and
  - (iv) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities;
- (b) the premises consist of a converted building which contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats), and –
  - (i) the living accommodation is occupied by persons who do not form a single household,
  - (ii) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it, andtheir occupation of the living accommodation constitutes the only use of that accommodation; or
- (c) the premises, being a converted building, comprise a block of self-contained flats in respect of which –
  - (i) the building work undertaken in connection with the conversion does not does not comply with the requirements of the Building Bye-laws (Jersey) 2007, and
  - (ii) less than two-thirds of the flats are owner-occupied.

To ensure the proposal for the inclusion of an HMO definition within the Regulations for Designated Premises is not over-onerous on business and commerce, the existing parameters relating to numbers of persons for which sleeping accommodation is

provided will be the same as the existing Regulations, with a minor amendment to the paragraph to clarify the sleeping provisions as follows –

If and only if, either –

- (a) the premises contain, or are used, or are capable of being used, as sleeping accommodation for more than 5 persons, and some or all of that sleeping accommodation is above the first floor or below the ground floor; or
- (b) the premises contain sleeping accommodation for more than 40 persons in those premises.

It is also important to note that within the existing Law it identifies that a fire certificate is not required in respect of any house which is being used as a single private dwelling. It is proposed to amend the Law and alter that definition to –

*A fire certificate shall not be required in respect of any premises that are used as a single dwelling by a single household.*

This was considered for the draft Regulations in relation to a HMO, and the circumstances where persons are to be regarded as forming a single household for the purpose of ascertaining whether a fire certificate is required for a single dwelling is clarified as follows –

For the purpose of Article 2(5) of the Law and of paragraph (2) –

- (a) persons are to be regarded as not forming a single household unless they are all members of the same family or there exists any of the circumstances set out in Regulation 2;
- (b) a person is a member of the same family as another person if –
  - (i) those persons are married to each other or in a civil partnership with each other, or live together as though husband and wife or civil partners,
  - (ii) one of them is a relative of the other, or
  - (iii) one of them is, or is a relative of, one member of a couple and the other is a relative of the other member of the couple;
- (c) a “couple” means 2 persons who are married to each other or in a civil partnership with each other, or live together as though husband and wife or civil partners;
- (d) “relative” means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin;
- (e) a relationship of the half-blood shall be treated as a relationship of the whole blood; and
- (f) the stepchild of a person shall be treated as his or her child.

The existing definition of “hospital”, set out in the Fire Precautions (Designated Premises) (Jersey) Regulations 1979 has been amended, by removing the words “administered by the States”. The full definition currently reads –

*“hospital” means any premises administered by the States and used for the reception of, and the provision of nursing for, persons suffering from any sickness, injury or infirmity, whether physical or mental, or for the reception of pregnant women or of women immediately after childbirth;’.*

This definition precludes the Minister from designating any premises, which are not administered by the States, as a hospital, such as a “Private Hospital”. These premises would still require a fire certificate under the current Regulations; however, their designation in Law would be a “Care or Nursing Home”. This is deemed unacceptable as this definition is itself derived from another regulatory authority’s definition and does not define the use of such premises appropriately. The new definition will read –

*“hospital” means any premises, other than a care or nursing home, used for the reception of, and the provision of nursing for, persons suffering from any sickness, injury or infirmity, whether physical or mental, or for the reception of pregnant women or of women immediately after childbirth;’.*

### **Consultation**

A consultation on the revised draft of the Regulations, along with the revised draft of the Fire Precautions (Jersey) Law 1977, was undertaken in January 2012. There were no resultant comments referring to the amendments to the 1979 Regulations.

Below is the complete list of the organisations consulted:

Chief Minister’s Department  
Comité des Connétables  
Health and Safety Department – Social Security  
Property Holdings  
Education and Home Affairs Scrutiny Panel  
The Association of Jersey Architects  
The Lodging House Association  
Jersey Hospitality Association  
Planning and Environment Department  
Health Protection  
Health and Social Services  
Population Office  
Care Federation (Eileen Crabb Pinewood Care Home)  
Economic Development Department  
Housing Department.

A Scrutiny Hearing on the draft Regulations took place in April 2012. Again, no comments were made by the Panel in relation to the amendments to the 1979 Regulations.

## **Exemption**

Although the Regulations, if approved alongside the Appointed Day Act (P.114/2012), will come into force on 1st January 2013, the Minister was of the view that this did not allow sufficient time for the occupiers of premises which would require certification for the first time by virtue of these Regulations to make their initial application. Accordingly, Regulation 4 provides that Article 5(1) of the Law, which contains the criminal offences, will not apply to premises which would require certification for the first time until 1st April 2013. This enables applications for certificates to be from 1st April 2013 in relation to such premises without any potential criminal liability arising for failure so to do until 1st April 2013.

## **Financial and manpower implications**

Some additional staffing demands are anticipated as a result of these Regulations. These will be met through internal adjustments in duties and responsibilities. Income will be generated as a result of the broadening of the range of premises requiring certification to include houses in multiple occupation. However, this will offset the cost to the Service of carrying out the necessary work to issue the certificates.



## Explanatory Note

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These Regulations designate premises in respect of which a fire certificate issued under Article 3 of the Fire Precautions (Jersey) Law 1977 (“Law”) is required. It revokes and re-enacts with amendments the Fire Precautions (Designated Premises) (Jersey) Regulations 1979. These Regulations also set out the circumstances where persons are to be regarded as forming a single household for the purpose of ascertaining whether a fire certificate is required for a private dwelling under Article 2(5) of the Law and whether a dwelling is a house in multiple occupation within the meaning given in Regulation 1(2) of these Regulations.

*Regulation 1* defines the expressions used in these Regulations.

*Regulation 2* sets out the circumstances where persons are to be regarded as forming a single household.

*Regulation 3* lists the uses of premises that are designated for the purposes of the Law. If premises are used for a purpose that is designated then those premises will require a fire certificate. Premises used as a hospital, care or nursing home will need to have a fire certificate, as will premises comprising a building used as part of a port or airport, including any area (not being part of a private club) used for the embarkation or disembarkation of passengers from any ship or aircraft.

Premises comprising a building or part of a building used as a house in multiple occupation, lodging house, hostel, residential school or tourist accommodation are also required to have fire certificate where sleeping accommodation is provided in those premises for more than 5 persons, and some or all of that sleeping accommodation is above the first floor or below the ground floor, or where sleeping accommodation is provided for more than 40 persons in those premises.

*Regulation 4* exempts certain premises from Article 5(1) of the Law. The effect of the exemption is that if a use for premises is designated in Regulation 3 of these Regulations but was not designated in the Fire Precautions (Designated Premises) (Jersey) Regulations 1979, then no offence is committed between the coming into force of these Regulations and 1st April 2013 if during any of that period there exists no fire certificate in respect of those premises.

*Regulation 5* revokes the Fire Precautions (Designated Premises) (Jersey) Regulations 1979.

*Regulation 6* provides that these Regulations are to be cited as the Fire Precautions (Designated Premises) (Jersey) Regulations 201- and states that they come into force on the day that Article 3 of the Fire Precautions (Amendment No. 2) (Jersey) Law 201- comes into force.





Jersey

## **DRAFT FIRE PRECAUTIONS (DESIGNATED PREMISES) (JERSEY) REGULATIONS 201-**

### **Arrangement**

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#### **Regulation**

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## **DRAFT FIRE PRECAUTIONS (DESIGNATED PREMISES) (JERSEY) REGULATIONS 201-**

*Made* [date to be inserted]

*Coming into force* [date to be inserted]

**THE STATES**, in pursuance of Article 2 of the Fire Precautions (Jersey) Law 1977<sup>1</sup>, have made the following Regulations –

### **1 Interpretation**

(1) In these Regulations unless the context otherwise requires –

“basic amenities” means –

- (a) a toilet;
- (b) personal washing facilities; or
- (c) cooking facilities;

“care or nursing home” means any residential care home, mental nursing home, maternity home or nursing home within the meaning of Article 3 of the Nursing and Residential Homes (Jersey) Law 1994<sup>2</sup>, and includes any such premises that are maintained, controlled or administered by the States or a Minister and which, by virtue of Article 3(2) of that Law, are premises to which that Law does not apply;

“converted building” means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed;

“first floor” means the floor above the ground floor;

“ground floor” means the floor which is situated at such level or levels that any given point on its perimeter is at or about, or not more than 1.2 metres below, the level of the finished surface of the ground adjoining the building in the vicinity of that point, or, if there are 2 or more such floors, means the highest of these;

“hospital” means any premises, other than a care or nursing home, used for the reception of, and the provision of nursing for, persons suffering from any sickness, injury or infirmity, whether physical or mental, or for

the reception of pregnant women or of women immediately after childbirth;

“hostel” means any premises, other than a care or nursing home, lodging house or tourist accommodation, wherein is provided, for persons generally or for any class or classes of persons, residential accommodation (otherwise than in separate and self-contained sets of premises) and either board or facilities for the preparation of food adequate to the needs of those persons, or both;

“lodging house” means any premises on which is conducted the business of providing lodging with or without board, for reward, whether or not those premises are tourist accommodation;

“Law” means the Fire Precautions (Jersey) Law 1977<sup>3</sup>;

“residential school” means a school which provides both education and board;

“self-contained flat” means a separate dwelling (whether or not on the same floor) –

- (a) which forms part of a building;
- (b) either the whole or a material part of which lies above or below some other part of the building; and
- (c) in which all three basic amenities are available in that part for the exclusive use of its occupiers;

“tourist accommodation” means premises registered under the Tourism (Jersey) Law 1948<sup>4</sup>.

- (2) For the purposes of these Regulations, premises are used as a house in multiple occupation if –
  - (a) the premises comprise a building or part of a building in which –
    - (i) the living accommodation is occupied by persons who do not form a single household,
    - (ii) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it,
    - (iii) their occupation of the living accommodation constitutes the only use of that accommodation, and
    - (iv) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities;
  - (b) the premises consist of a converted building which contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats), and –
    - (i) the living accommodation is occupied by persons who do not form a single household,

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- (ii) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it, and  
their occupation of the living accommodation constitutes the only use of that accommodation; or
    - (c) the premises, being a converted building, comprise a block of self-contained flats in respect of which –
      - (i) the building work undertaken in connection with the conversion does not comply with the requirements of the Building Bye-laws (Jersey) 2007<sup>5</sup>, and
      - (ii) less than two-thirds of the flats are owner-occupied.
  - (3) For the purpose of Article 2(5) of the Law and of paragraph (2) –
    - (a) persons are to be regarded as not forming a single household unless they are all members of the same family or there exists any of the circumstances set out in Regulation 2;
    - (b) a person is a member of the same family as another person if –
      - (i) those persons are married to each other or in a civil partnership with each other, or live together as though husband and wife or civil partners,
      - (ii) one of them is a relative of the other, or
      - (iii) one of them is, or is a relative of, one member of a couple and the other is a relative of the other member of the couple;
    - (c) a “couple” means 2 persons who are married to each other or in a civil partnership with each other, or live together as though husband and wife or civil partners;
    - (d) “relative” means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin;
    - (e) a relationship of the half-blood shall be treated as a relationship of the whole blood; and
    - (f) the stepchild of a person shall be treated as his or her child.
  - (4) A flat is “owner-occupied” for the purpose of paragraph (2)(c)(ii) if it is occupied by a person who is the owner, including –
    - (a) any co-owner;
    - (b) the owner of shares that confer entitlement to occupy the dwelling;
    - (c) the occupier of the dwelling under a contract lease for which a premium has been paid and any rent that is paid is substantially less than a market rent for the dwelling; and
    - (d) any usufructier.
  - (5) A person is to be treated as occupying a building or part of a building as his or her only or main residence for the purposes of paragraph (2) if he or she is provided with that accommodation by his or her employer or an agent or employee of his or her employer, and where occupation of the building or part of a building is made partly in consideration of his or her employment within Jersey, whether or not other charges are payable in respect of that occupation.

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**2 Circumstances where persons to be regarded as forming single household**

- (1) Where –
- (a) a person (“person A”) occupies living accommodation in a building or part of a building; and
  - (b) another person (“person B”) and any member of person B’s family living with him or her occupies living accommodation in the same building or part,
- those persons are only to be regarded as forming a single household for the purposes of Regulation 1(3)(a) or Article 2(5) of the Law if their circumstances are those described in paragraph (2).
- (2) The circumstances are that –
- (a) person A carries out work or performs a service of an exclusively domestic nature for person B or a member of person B’s family;
  - (b) person A’s living accommodation is supplied to him by person B or by a member of person B’s family as part of the consideration for carrying out the work or performing the service; and
  - (c) person A does not pay any rent or other consideration in respect of his or her living accommodation (other than carrying out the work or performance of the service).
- (3) Work or a service usually carried out or performed by any of the following is to be regarded as work or service of a domestic nature for the purpose of paragraph (2)(a) –
- (a) au pair;
  - (b) nanny;
  - (c) nurse;
  - (d) carer;
  - (e) governess;
  - (f) servant, including maid, butler, cook or cleaner;
  - (g) chauffeur;
  - (h) gardener;
  - (i) secretary; or
  - (j) personal assistant.
- (4) Where person A and person B are to be regarded as forming a single household under paragraph (1) any member of person A’s family occupying the living accommodation with him or her is to be regarded as forming a single household with person A, person B and any member of person B’s family living with him or her for the purpose of Regulation 1(3)(a).
- (5) Where a person and his or her foster parent occupy living accommodation in the same building or part of a building, they are to be regarded as forming a single household for the purposes of Regulation 1(3)(a) if that person is placed with the foster parent under the provisions of the Children (Placement) (Jersey) Regulations 2005<sup>6</sup>.



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### **3 Premises requiring fire certificate**

- (1) The use of premises as –
  - (a) a hospital; or
  - (b) a care or nursing home,is designated for the purposes of Article 2 of the Law.
- (2) The use of premises as a building that is part of a port or airport, including any area (not being part of a private club) used for the embarkation or disembarkation of passengers from any ship or aircraft, is designated for the purposes of Article 2 of the Law.
- (3) Subject to paragraph (4) the use of premises as –
  - (a) a house in multiple occupation;
  - (b) a lodging house;
  - (c) a hostel;
  - (d) a residential school; or
  - (e) tourist accommodation,is designated for the purposes of Article 2 of the Law.
- (4) The use of any premises for a purpose described in paragraph (3) is not a designated use unless –
  - (a) the premises contain, or are used, or are capable of being used, as sleeping accommodation for more than 5 persons, and some or all of that sleeping accommodation is above the first floor or below the ground floor; or
  - (b) the premises contain sleeping accommodation for more than 40 persons in those premises.

### **4 Exemption**

Premises that are put to a use that is designated in Regulation 3 of these Regulations but which is a use that was not designated in Regulation 2 of the Fire Precautions (Designated Premises) (Jersey) Regulations 1979<sup>7</sup> shall be exempt from Article 5(1) of the Law for the period beginning with the coming into force of these Regulations and ending on 1st April 2013.

### **5 Revocation**

The Fire Precautions (Designated Premises) (Jersey) Regulations 1979<sup>8</sup> are revoked.

### **6 Citation and commencement**

These Regulations may be cited as the Fire Precautions (Designated Premises) (Jersey) Regulations 201- and shall come into force on the day that Article 3 of the Fire Precautions (Amendment No. 2) (Jersey) Law 201- comes into force.

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- <sup>1</sup> *chapter 23.150*
  - <sup>2</sup> *chapter 20.725*
  - <sup>3</sup> *chapter 23.150*
  - <sup>4</sup> *chapter 05.850*
  - <sup>5</sup> *chapter 22.550.05*
  - <sup>6</sup> *chapter 12.200.50*
  - <sup>7</sup> *chapter 23.150.25*
  - <sup>8</sup> *R&O.6718 (chapter 23.150.25)*